

REMARKS

The Specification has been amended to use the proper format for the registered trademark ROUNDUP and to provide clarity. Applicant has amended paragraphs [0126] and [0150] of the Specification to correct typographical errors. The Specification has been amended to include the ATCC Accession number. A copy of the ATCC deposit receipt is attached. Applicant has amended claims 1, 3-6, 10, 12, 14-15, 18, and 20-29. Claims 8 and 9 have been canceled. Claim 30 has been added. These changes have been made to place the claims in better form for examination and to further obviate the 35 U.S.C. §§112, 102(b) and 103(a) rejections as set forth in the Office Action dated April 14, 2006. It is believed that none of these amendments constitute new matter. It is submitted that these amendments obviate the rejections. Withdrawal of these rejections is respectfully requested.

The Examiner has rejected claims 8 and 9 under 35 U.S.C. §112, first paragraph, as failing to comply with the written description requirement. Applicant has canceled claims 8 and 9. Withdrawal of this rejection is respectfully requested.

The Examiner has rejected claims 1-29 under §112, first paragraph, as failing to comply with the enablement requirement. Applicant has amended claims 1, 6, 22, 23 and 28 to include the ATCC Accession number. Additionally, the undersigned avers that:

- a) access to the invention will be afforded to the Commissioner during the pendency of the application;
- b) all restrictions upon availability to the public will be irrevocably removed upon the granting of a patent;
- c) the deposit will be maintained in a public depository for a period of 30 years or 5 years after the last request or for the enforceable life of the patent, whichever is longer;
- d) a test of the viability of the biological material at the time of deposit was performed; and
- e) the deposit will be replaced if it should ever become inviable or when requested by ATCC.

Accordingly, withdrawal of this rejection is respectfully requested.

The Examiner has rejected claims 23-29 under 35 U.S.C. §112, first paragraph, as failing to comply with the enablement requirement. Applicant has amended claims 23-29. Withdrawal of this rejection is respectfully requested.

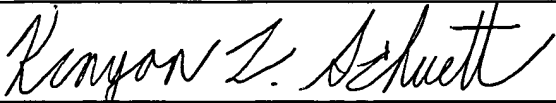
The Examiner has rejected claims 1, 5, 6, 22, 23, 24, 28 and 29 under 35 U.S.C. §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Specifically, the Examiner has rejected claims 1, 6, 22, 23 and 28 as being indefinite in the recitation of "ATCC Accession No. PTA-_____", because the ATCC Accession number is missing. Applicant has amended claims 1, 6, 22, 23 and 28 to include the ATCC Accession number. Withdrawal of this rejection is respectfully requested.

The Examiner has rejected claims 1, 6, 22, 23, 24, 28 and 29 under 35 U.S.C. §112, second paragraph, as being indefinite in that the recitation of "S030153" does not clearly identify the claimed soybean cultivar and seed, and does not set forth the metes and bounds of the claimed invention. Applicant has amended claims 1, 6, 22, 23 and 28 to state the ATCC Accession number. Withdrawal of this rejection is respectfully requested.

The Examiner has rejected claim 5 under 35 U.S.C. §112, second paragraph, as being indefinite in that the members of the Markush group are not tissue types, but rather are cell types or organ types. Applicant has amended claim 5. Withdrawal of this rejection is respectfully requested.

The Examiner has rejected claims 8 and 9 under 35 U.S.C. §102(b) as being anticipated by or, in the alternative, under 35 U.S.C. §103(a) as obvious over Eby W.H. (U.S. Patent No. 5,908,977, filed May 7, 1998 and issued June 1, 1999). Applicant has canceled claims 8 and 9. Withdrawal of this rejection is respectfully requested.

In view of the above amendments and remarks, it is submitted that the claims satisfy the provisions of 35 U.S.C. §§112, 102(b), and 103(a). Reconsideration of this application and an early notice of allowance are respectfully requested.

SIGNATURE OF APPLICANT, ATTORNEY OR AGENT REQUIRED					
NAME AND REG. NUMBER	Kenyon L. Schuett, Reg. No. 44,324				
SIGNATURE			DATE	July 13, 2006	
Address	Jondle & Associates P.C. 858 Happy Canyon Road, Suite 230				
City	Castle Rock	State	CO	Zip Code	80108
Country	U.S.A.	Telephone	303-799-6444	Fax	303-799-6898

ATCC

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10801 University Blvd • Manassas, VA 20110-2209 • Telephone: 703-365-2700 • FAX: 703-365-2745

BUDAPEST TREATY ON THE INTERNATIONAL RECOGNITION OF
THE DEPOSIT OF MICROORGANISMS FOR THE PURPOSES OF PATENT PROCEDURE

INTERNATIONAL FORM

RECEIPT IN THE CASE OF AN ORIGINAL DEPOSIT ISSUED PURSUANT TO RULE 7.3
AND VIABILITY STATEMENT ISSUED PURSUANT TO RULE 10.2

To: (Name and Address of Depositor or Attorney)

Jondle & Associates P.C.
Attn: Kenyon L. Schuett
858 Happy Canyon Road, Suite 230
Castle Rock, CO 80108

Deposited on Behalf of: Mertec LLC

Identification Reference by Depositor:
Soybean *Glycine max* (L.): S030153
(Ref.: Docket or Case No. 1423-044)

Patent Deposit Designation
PTA-7575

The seeds were accompanied by: ☒ a scientific description a proposed taxonomic description indicated above. The seeds were received May 3, 2006 by this International Depository Authority and have been accepted.

AT YOUR REQUEST: ☒ We will inform you of requests for the seeds for 30 years.

The seeds will be made available if a patent office signatory to the Budapest Treaty certifies one's right to receive, or if a U.S. Patent is issued citing the seeds and ATCC is instructed by the United States Patent & Trademark Office or the depositor to release said seeds.

If the seeds should die or be destroyed during the effective term of the deposit, it shall be your responsibility to replace them with viable seeds of the same.

The seeds will be maintained for a period of at least 30 years from date of deposit, or five years after the most recent request for a sample, whichever is longer. The United States and many other countries are signatory to the Budapest Treaty.

The viability of the seeds cited above was tested May 30, 2006. On that date, the seeds were viable.

International Depository Authority: American Type Culture Collection, Manassas, VA 20110-2209 USA.

Signature of person having authority to represent ATCC:



Tanya Nunnally, Patent Specialist, ATCC Patent Depository

Date: June 30, 2006